

STATE TAX COMMISSION

of

for redetermination of deficiencies of :
franchise tax under Article 9-A of :
the tax law for the fiscal years ended :
4/30/69 and 4/30/70 :

It is hereby found:

(2) Montauk Improvement, Inc. and its wholly owned subsidiary, Montauk Country Club, Inc., filed combined returns for the fiscal years ended 4/30/69 and 4/30/70 without receiving prior permission. The Corporation Tax Bureau denied permission to file on a combined basis and issued statements of audit adjustment on March 15, 1973, and subsequent notices of deficiency on May 15, 1973, computing taxes on an individual basis as follows:

Entire net income	\$248,419.28
Tax at 7%	17,389.35
Subsidiary capital tax (\$708,332.29 at .000625)	442.71
Total tax	17,832.06
Tax per report	5,796.40
Deficiency	12,035.66

Montauk Improvement, Inc. - FYE 4/30/70

Entire net income	\$118,544.77
Tax at 7%	8,298.13
Subsidiary capital tax (\$2,065,444.83 at .000625)	1,290.90
Total tax	9,589.03
Payment with report	3,828.46
Deficiency	5,760.57

Montauk Country Club, Inc. - FYE 4/30/69

Total capital per schedule E of CT-3 report	2,208,928.00
Tax at .00125	2,761.16
Payment	100.00
Deficiency	2,661.16

Montauk Country Club, Inc. - FYE 4/30/70

Total capital per schedule E of CT-3 report	3,535,038.00
Tax at .00125	4,418.80
Payment	650.00
Deficiency	3,768.80

(3) Montauk Improvement, Inc. is engaged in the land development business in Montauk, L.I., N.Y. It improves, develops and subdivides vacant land into lots for sale to customers. It also builds and sells homes.

Montauk Country Club, Inc. is a recreational facility consisting of a golf course, swimming pool, tennis courts, restaurant, etc. It is physically located within and is surrounded or contiguous to the land being developed for sale by Montauk Improvement, Inc. The use of the recreational facility is not limited to persons who purchase lots or homes from Montauk Improvement, Inc., but is available to the general public.

(4) For the fiscal year ended 4/30/70, Montauk Improvement, Inc. should have been credited with \$6,354.84 payment with report, instead of \$3,828.46, resulting in a revised deficiency for that year of \$3,234.19, instead of \$5,760.57.

(5) The corporations contend that the notices of deficiency issued for the fiscal year ended 4/30/69 are untimely since the returns were mailed on January 15, 1970, and the notices of deficiency were issued on May 15, 1973, which is in excess of the three year assessment period provided in Sec. 1083(a) of the tax law.

Returns were mailed by the corporations on January 15, 1970 as follows:

- (a) Return of Montauk Improvement, Inc. on individual form CT-3 indicating the amount of tax liability on a combined basis.
- (b) Return of Montauk Country Club, Inc. on individual form CT-3 indicating the amount of tax liability on a combined basis.
- (c) Return of Montauk Improvement, Inc. and Montauk Country Club, Inc. on combined form CT-3A showing computation of tax liability on a combined basis.

Sec. 1083(a) of the tax law reads in part:

"(a) General. - Except as provided in this section, any tax under article . . . nine-a, . . . shall be assessed within three years after the return was filed . . ."

(6) Section 211.4 of the tax law reads in part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a report on a combined basis covering any other such corporations . . ."

The State Tax Commission hereby

DECIDES:

(A) Since the taxpayers did not request advance permission to file on a combined basis, the combined returns submitted were unauthorized and improper. The three year assessment period for the fiscal year ended April 30, 1969 would have commenced on January 15, 1970 only if proper completed returns on an individual basis had been filed on that date. Accordingly, the notices of deficiency for the fiscal year ended April 30, 1969 were timely issued.

(B) Computation of tax liability on an individual basis is affirmed. Montauk Improvement, Inc. is a real estate developer engaged in the sale of lots and homes whereas Montauk Country Club, Inc. operates a recreational facility which is open to the general public. The tax liability of these two corporations is more properly reflected on an individual basis since the profit or loss of each is primarily due to its own operations, instead of being due to intercompany transactions.

It is the policy of the Tax Commission not to permit or require a combined return where taxation on an individual basis produces a more proper result.

(C) The notices of deficiency issued against Montauk Improvement, Inc. for the fiscal year ended April 30, 1969 and against Montauk Country Club, Inc. for the fiscal years ended April 30, 1969 and April 30, 1970, as indicated in (2), and the revised deficiency against Montauk Improvement, Inc. for the fiscal year ended April 30, 1970, as indicated in (4), are affirmed, together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 18th day of September, 1974.

STATE TAX COMMISSION


President


Commissioner


Commissioner